GOVERNOR PULLS PLAN
-- SUNSET REVIEW POSTPONED

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The Board of Podiatric Medicine (BPM) is the unit of the Medical Board of California (MBC), Department of Consumer Affairs (DCA), which administers licensing of DPMs under the State Medical Practice Act.

Monitor Fellmeth

Sacramento, March 25--Governor Schwarzenegger granted boards a stay of box smashing, but scrutiny will continue, as it should. Sunset Review continues and BPM was up to its ankles preparing its third quadrennial report when informed our review will be put off for at least a year. The Joint Committee is backlogged with boards it postponed from the last cycle, and BPM seems well regarded and non-controversial.

We'll follow the Legislature's current review of the Medical Board, while slowing but not stopping preparation of our report for submission next year barring a further continuance. We'll look to advance the Governor's principles and those of other leaders like Senator Liz Figueroa, Medical Board Monitor Julie D'Angelo Fellmeth, and UCSF's Ed O'Neil.

Senator Figueroa Fighting for Consumers

Liz Figueroa chairs the Senate Business and Professions Committee and the Joint Committee on Boards, Commissions, and Consumer Protection (formerly the sunset review committee).

Senator Figueroa

In 2005, she was also named head of a new Senate committee charged with examining all reorganizations. In addition, she's a board member of the Little Hoover Commission and the American Board of Plastic Surgery, among others.

Wrapping up January 25 hearings on the Enforcement Monitor's *Initial Report*, she responded to Medical Board representatives: "I'm not hearing proaction. . . . It's always us having to get you moving. . . . Why haven't you utilized these tools? . . . You're always playing defense. . . . Trying isn't good enough anymore. . . . Why did you wait for the Monitor to bring it up? . . . Not quick enough. . . . You have been before this committee many times and I have never heard you endorse vertical prosecution until this report came out. . . . Do we have to have an Enforcement Monitor on a yearly basis?" [*fyi*--BPM endorsed "vertical prosecution," i.e., transferring the Med Board's investigators to the Justice Department to work directly with the Deputy Attorneys General handling our cases, in 1990. Until now, the Med Board was in opposition.]

Staff Report from Joint Committee on Boards

"The Medical Board Monitor's Report bears out the conclusion that state regulation of physicians in California is at a crossroads.

"There is some hope that the Board has now begun to make the necessary commitment to effective and vigorous enforcement. The new Executive Officer not only understands enforcement, he comes from the world of enforcement.

"This is progress at an important level. But virtually none of the most serious problems discussed here can be solved with commitment alone. The Board's other true emergency – a lack of resources – must also be addressed. The Board is now headed into serious deficit, and has already been warned by the Department it must craft a remedy immediately.

"The Board does not receive General Fund money to supplement its budget, and it has virtually no programs or personnel that can be cut without utterly crippling its already meager and freeze-depleted functions. Either the Board must be effectively crippled or license fees must be increased, and they must be increased substantially – **to bring physicians up to par with other licensed professionals, both within the medical world (like podiatrists)** and outside it (such as lawyers).

"If this and the other reforms highlighted cannot be accomplished even after the detailed and thorough findings of the Report, California's system of physician regulation can be expected to free fall into crisis, where the Legislature's decision in 1975 to place significant reliance upon government-imposed remedies rather than private ones will be questioned.

"Voters in other states are exploring other, more creative forms of physician discipline. Last year, for example, about seventy percent of the voters in Florida passed Amendment 8. That Amendment says, in part, that "No person who has been found to have committed three or more incidents of medical malpractice shall be licensed or continue to be licensed by the State of Florida to provide health care services as a medical doctor." California has not yet gone down this road of bypassing the discretion of its Medical Board.

"The Report suggests the Board is aware of its central role is enforcement, and has the desire to stake its reputation on that goal. All stakeholders have a deep interest in making sure that California's Board finally lives up to the role it has been assigned, and is not just adequately serving the public's trust, but is the best in the nation."

UCSF Center Criteria

Edward O'Neil, M.P.A., Ph.D., Director of the UCSF Center for the Health Professions, writes it is "time to look at our current system of regulations . . . .

"This call for change, however, comes with a caveat. . . . A unified health professional regulatory function must address four critical areas to build a system of health that is responsive, safe and affordable.

"The first task is the creation of a process that supports a scientific and impartial **determination of the scope of practice** for each profession. The first criterion must be an assessment of patient safety. This determination must be drawn from an evidence base and be consistently in the public's interest addressing issues of access, safety and cost of care.

"The second key regulatory function must be a **system of discipline** that works effectively to remove practitioners who endanger the health of the public. Again, consistent, evidence-based standards must be established and systematically enforced. Such a system could also make it easier for conscientious professionals to practice without fear of unwarranted reprisals.

Dr. O'Neil

"Assurance of the **continuing competence** of *all health professionals* is the third core activity. This must be based on regular assessments of patient care-centered competency, coupled with non-punitive, corrective educational programs.

"Finally, the effort must make more and better **quality information** available to individual practitioners. This information cannot afford to reside with state agencies or insurance companies, but must be shared with the broad consuming public. Again, this needs to be done in a manner that improves practice and protects quality practitioners.

"This is not a time to flinch in the face of challenge, but a time to embrace an opportunity to recast and reshape a system that has lived beyond its market reality."

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